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Attorneys for Defendant
Libre By Nexus, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JUAN QUINTANILLA VASQUEZ
and GABRIELA PERDOMO ORTIZ,
and VICTOR HUGO CATALAN
MOLINA, individually and on behalf
of all others similarly situated,

Plaintiffs,

vs.

LIBRE BY NEXUS, INC. and JOHN
DOES 1-50,

Defendants.

CASE NO.: 4:17-cv-00755-CW (LB)

**DEFENDANT'S RE-NOTICE OF
MOTION TO DISMISS COUNTS V
AND VI OF THE SECOND
AMENDED COMPLAINT**

Date: August 14, 2018

Time: 2:30 p.m.

Courtroom: TBD

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on August 14, 2018, at 2:30 p.m. in a
3 courtroom in the above Court to be assigned for the hearing, at 1301 Clay Street,
4 Oakland, CA 94612, the Honorable Claudia A. Wilken presiding, defendant Libre By
5 Nexus, Inc. ("Defendant") will and hereby does move this Court, pursuant to Rule
6 12(b)(6) of the Federal Rules of Civil Procedure, for an Order dismissing Counts V
7 and VI of the Second Amended Complaint.

8 This motion was previously filed on July 10, 2017 (Document 34), and
9 Plaintiffs filed their opposition to the motion on August 1, 2017 (Document 41).
10 Further briefing and hearing on the motion was postponed several times by
11 stipulations, approved by the Court, as the parties engaged in settlement negotiations
12 and mediation. On March 8, 2018, the Court entered an Order Administratively
13 Terminating Motions in Light of Stay of Discovery and Continuance of all Deadlines
14 (Document 60), wherein the motion was denied without prejudice, the Court stating:
15 "If the parties do not reach a settlement of this action, the parties may re-notice the
16 motions for hearing and disposition according to the schedule set forth in the Court's
17 January 29, 2018 order. The parties need not re-file previously-filed briefs."

18 The mediator, Justice James R. Lambden (Ret.), has certified that the case did
19 not settle and that the mediation is complete (Document 61).

20 Accordingly, pursuant to the Court's orders of March 8, 2018 (Document 60)
21 and January 29, 2018 (Document 58), defendant hereby re-notices the motion to
22 dismiss.

23 This motion is made on the grounds that Plaintiffs have failed to state a claim
24 upon which relief can be granted under 15 U.S.C. § 1692, *et seq.*, the Fair Debt
25 Collections Practices Act ("FDCPA"), or under California Civil Code § 1632 *et seq.*,
26 the California Translation Act, because Plaintiffs have failed to plead sufficient facts
27 to constitute a valid claim for relief.
28

1 The Motion will be based on the Notice of Motion and Motion filed on July 10,
2 2017 and the Memorandum of Points and Authorities in Support of the Motion
3 contained therein (Document 34), the reply memorandum, and such other and further
4 evidence or argument as the Court may allow.

5
6 DATED: May 29, 2018

SIMMONDS & NARITA LLP

7 GORBY, PETERS & ASSOCIATES LLC

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9 By: /s/ Michael R. Simmonds
10 Michael R. Simmonds
11 Attorneys for Defendant
12 Libre By Nexus, Inc.
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